

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN CUTTS,)
)
Plaintiff,)
)
v.) No. 4:06-CV-41 CAS
)
STATE OF MISSOURI,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff John Cutts' motion to add defendants and amend the complaint, and plaintiff's motion for additional time to respond to defendant State of Missouri's motion to dismiss. For the following reasons, the Court will deny the motion to add defendants and amend the complaint without prejudice, and grant the motion for additional time.

Motion for Leave to Add Defendants and Amend the Complaint.

Although leave to amend a complaint is to be freely granted under Federal Rule of Civil Procedure 15(a), the Court has discretion whether or not to grant leave to amend. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330-32 (1971). Factors to consider in determining whether leave to amend should be granted include but are not limited to (1) whether the motion was filed in bad faith or with dilatory motive; (2) whether the motion was filed with undue delay; (3) whether leave to amend would be unduly prejudicial to the opposing parties; and (4) whether the proposed amendment would be futile. See Bell v. Allstate Life Ins. Co., 160 F.3d 452, 454 (8th Cir. 1998) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

Plaintiff has not submitted a proposed amended complaint along with his motion for leave to amend. Plaintiff states that he wishes to add Phillip Jones, St. Louis County Family Court Commissioner, in his individual and official capacities, and also seeks to “modify” the original complaint “to more fully encompass the defendants against whom the claims will be made.” Mot. to Add Defts. Because plaintiff did not submit a proposed amended complaint, the Court cannot determine whether the proposed amended complaint would be futile. Plaintiff’s motion for leave to add defendants and amend complaint should therefore be denied without prejudice.

Any future motion to amend the complaint must be accompanied by a proposed amended complaint. Plaintiff is advised that the Court does not permit complaints to be amended by interlineation or supplementation. It is well established that an amended complaint supercedes an original complaint and renders the original complaint without legal effect. In re: Atlas Van Lines, Inc., 209 F.3d 1064 (8th Cir. 2000). Plaintiff must therefore include all relevant allegations in the proposed amended complaint.

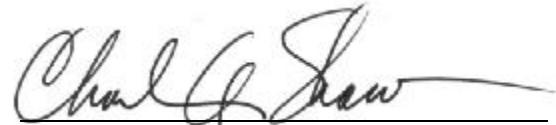
Motion for Extension of Time.

Plaintiff seeks additional time to file a response to the defendant’s motion to dismiss the complaint, but does not indicate how much times he needs or why additional time is needed. Nonetheless, the Court will grant plaintiff’s motion for an extension of time. Plaintiff’s response was due March 3, 2006. The Court will grant plaintiff an additional twenty days, until March 30, 2006, to file his response to the motion to dismiss.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to add defendants and amend complaint is **DENIED without prejudice.** [Doc. 4]

IT IS FURTHER ORDERED that plaintiff's motion for extension of time to file a response to defendant State of Missouri's motion to dismiss is granted, to the extent that plaintiff's response shall be filed by **March 30, 2006.** [Doc. 5]



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 10th day of March, 2006.